IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 24550 of 1996

Between:

Rachamalla Savitri, W/o Krishna Murthy,
r/o Baithpalligangaram, Sathupalli Mandal,
Khamam District.

..... PETITIONER

AND

1 The District Collector,
Khamam.
2 The Mandal Revenue Officer
Sathupalli Khamam District.
3 Tati Seshappa, S/o Venkappa,
Agriculture, Marrigudem,
Zelugupalli Mandal West Godavari District.

.....RESPONDENTS

The Court made the following :

ORDER:

Petitioner who purchased Ac.3.00 in S.No.40/56 of Baithapalligangaram village from the assignee (third respondent) was issued a notice under Section 3(2) of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 ('the Act') by the Mandal Revenue Officer (second respondent) for which she submitted an explanation. Thereafter, second respondent dropped further proceedings in view of the Government memo No.5101/78-1 dated 06-03-1979 that the Act does not apply to the sales made prior to the coming into force of the Act and communicated that order to the petitioner vide L.Dis.No.APALC.No.124/85 dated 21-11-1985. Subsequently, when possession of the petitioner over the said land was tried to be interfered with by the second respondent, she got made enquiries and came to know that first respondent through his order in RC.No.B4/9070/94 dated 28-09-1994 cancelled the assignment in favour of the third respondent under Section 166-B of the A.P. (T.A.) Land Revenue Act, 1317-F (for short 'Telangana Act'). Questioning the said order, petitioner filed

this writ petition.

2. The main contention of the learned counsel for the petitioner is that since the petitioner who is actually in possession of the property and thereby would be an effected person, was not given an opportunity of being heard before passing the order impugned, the same is liable to be set aside.

3. The contention of the learned Assistant Government Pleader is that since notice was issued to the third respondent prior to the passing of the order impugned, provisions of Section 166-B of the Telangana Act are complied with.

4. The fact that the petitioner was served with a memo dated 21-11-1985 of the second respondent informing her that further proceedings under the Act are dropped is admitted in the counter filed by the second respondent. So it is clear that respondents 1 and 2 are aware of the possession of the petitioner over the assigned land as alienee from the assignor by virtue of a sale that took place prior to the coming into force of the Act.

5. Thereafter, when first respondent proposed to take action under Section 166-B of the Telangana Act, he should have followed the procedure prescribed therein. As per proviso to Sub-Section 1 of Section 166-B of the Telangana Act, “concerned parties” have to be summoned and heard before an order affecting their right is passed. Petitioner being in possession and enjoyment of the property as purchaser from the third respondent is ‘concerned’ and would be ‘affected’ party by virtue of the order impugned. Therefore, she has to be given an opportunity of being heard as per the mandate in the proviso to Sec. 166(B) of the Telangana Act. Petitioner, admittedly, was not given an opportunity of being heard and thus there is clear violation of the mandate in the proviso to Sub-Section 1 of Section 166-B of the Telangana Act. For that reason only the order impugned is liable to be set aside.

6. Hence the writ petition is allowed and the order impugned is set aside. First respondent after issuing a show cause notice to the petitioner and after affording an opportunity of being heard to her can pass appropriate orders as per law. No costs.

C.Y.SOMAYAJULU, J.

31-01-2006

Kvsn